

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-129282-09

Date:

October 08, 2009

## LEGEND

Distributing: =

State: =

Year 1: =

Business A: =

Business B: =

Shareholder: =

a =

Dear :

This letter responds to your representative's June 8, 2009 letter requesting rulings as to the Federal income tax consequences of proposed transactions. The material information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding: (i) whether the distribution described below satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the distribution is used principally as a device for the distribution of the earnings and profits of the distributing company or the controlled company or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); and (iii) whether this distribution is part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent (50%) or greater interest in Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7).

Furthermore, no opinion is expressed as to the validity of any S corporation election of either Distributing or Controlled.

#### SUMMARY OF FACTS

Distributing is a closely held State corporation that uses the accrual method of accounting and a calendar year. Distributing was incorporated in Year 1, and elected S corporation status upon incorporation. Distributing is engaged in Business A and Business B. Distributing has outstanding a shares of common stock (and no other stock), all of which stock is held by Shareholder.

Controlled is being formed as a State corporation and will elect to be treated as an S corporation for federal income tax purposes. Controlled will use the accrual method of accounting and a calendar year. Controlled will have outstanding one class of stock which, initially, will all be held by Distributing.

Shareholder A desires to operate Business A and Business B in separate entities in order to achieve cost savings through the minimization of certain state income taxes. To achieve this separation, Distributing will transfer Business B to Controlled in exchange for all the stock in Controlled and then will distribute all the Controlled Stock to Shareholder.

Financial information submitted by Distributing indicates that each of Distributing's Business A and Distributing's Business B has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

#### PROPOSED TRANSACTION

For what are represented as valid business reasons and in order to achieve the

objectives discussed above, Distributing proposes the following transaction (the "Transaction"):

1. Distributing will transfer to Controlled the assets of Business B in exchange for all of the stock in Controlled and the assumption by Controlled of all of the liabilities associated with Business B (the "Contribution").
2. Distributing will distribute to Shareholder all of the Controlled Stock (the "Distribution").
3. Controlled will make an election under section 1362(a) to be treated as an S corporation (within the meaning of section 1361(a)).

### REPRESENTATIONS

Distributing has made the following representations in connection with the Transaction:

- (a) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities to be assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets were subject.
- (b) The liabilities to be assumed (within the meaning of section 357(d)) by Controlled in the Transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (c) Distributing neither accumulated its receivables nor made an extraordinary payment of its payables in anticipation of the Transaction.
- (d) No intercorporate debt will exist between Distributing and Controlled at the time of or subsequent to the Distribution, except for trade payables arising in the ordinary course of business. The trade payables will not constitute stock or securities for purposes of section 355.
- (e) No two parties to the Transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (f) No part of the consideration to be distributed by Distributing will be received by Shareholder as a creditor, employee or in any capacity other than as a shareholder of Distributing.
- (g) Payments made in connection with all continuing transactions will be for fair

market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (h) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of these assets. Section 362(e)(2).
- (i) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and there have been no substantial operational changes since the date of the last financial statement submitted.
- (j) Following the Transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the businesses conducted by Distributing prior to the consummation of the Transaction.
- (k) The distribution of stock of Controlled is carried out for the corporate business purpose of cost savings. The distribution of Controlled stock is motivated, in whole or substantial part, by that corporate business purpose.
- (l) For purposes of section 355(d), immediately after the Distribution, no person (determined by applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (m) For purposes of section 355(d), immediately after the Distribution, no person (determined by applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock, that was (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five year period (determined after applying section 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (n) The Distribution is not a part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled and

including any predecessor or successor of any such corporation.

- (o) The Transaction is not used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both. See section 355(a)(1)(B).
- (p) Neither Distributing nor Controlled will be a disqualified investment corporation within the meaning of section 355(g)(2).
- (q) Distributing is an S corporation (within the meaning of section 1361(a)). Controlled will elect to be an S corporation pursuant to section 1362(a) on the first available date after its formation, and there is no plan or intent to revoke or otherwise terminate the S corporation election of either Distributing or Controlled.

### RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The Contribution together with the Distribution will be a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a party to the reorganization within the meaning of section 368(b).
2. No gain or loss will be recognized by Distributing upon its receipt of Controlled corporation stock in exchange for the transfer of assets to Controlled and the assumption of liabilities by Controlled. Sections 361(a) and 357(a).
3. No gain or loss will be recognized by Controlled upon its receipt of assets in exchange for the issuance of shares of Controlled stock. Section 1032(a).
4. Controlled's basis in each of the assets received from Distributing will equal the basis of such assets in the hands of Distributing immediately prior to the transaction. Section 362(b).
5. The holding period for each asset received by Controlled from Distributing will include the period during which such asset was held by Distributing. Section 1223(2).
6. No gain or loss will be recognized to Distributing on the distribution of stock to Shareholder in the Distribution. Section 361(c)(1).
7. No gain or loss will be recognized to (and no amount will be included in the income of) Shareholder upon receipt of Controlled stock in the Distribution. Section 355(a)(1).

8. The aggregate basis of the Distributing stock and the Controlled stock in the hands of Shareholder will be the same as the aggregate basis of the Distributing stock held by Shareholder immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each immediately after the Distribution in accordance with Treas. Reg. § 1.358-2(a). Section 358(a), (b), and (c).
9. The holding period of the Controlled stock received by Shareholder in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution will be made, provided that the Distributing stock is held by Shareholder as a capital asset on the day of the Distribution. Section 1223(1).
10. Distributing's earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
11. The accumulated adjustments account of Distributing will be allocated between Distributing and Controlled in a manner similar to the manner in which the earnings and profits of Distributing will be allocated under section 312(h) (see Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1368-2(d)(3)).
12. Provided that the Distribution is undertaken immediately after the Contribution, Distributing's momentary ownership of the stock in Controlled, as part of the reorganization under section 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under section 1361(b)(1)(B) and will not, in itself, render Controlled ineligible to elect to be an S corporation for its first taxable year.

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions or of any other matter under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular as provided above, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and Treas. Reg. § 1.335-2(d)); and (iii) whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii). In addition, no opinion is expressed as to the validity of any S corporation election of either Distributing or Controlled.

### PROCEDURAL STATEMENTS

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax returns of each taxpayer involved for the taxable year(s) in which the Transaction is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Douglas C. Bates*

Douglas C. Bates  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: